IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 760 of 1992

with

CRIMINAL APPEAL No 880 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MOHANBHAI CHHAGANLAL MODI

Appearance:

1. Criminal Appeal No. 760 of 1992
Mr.K.T.Dave, Ld. APP for Petitioner No. 1
MR JB PARDIWALA for Respondent No. 1-3

2. Criminal Appeal No. 880 of 1999
NOTICE SERVED for Petitioner No. 1
..... for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/08/2001

COMMON ORAL JUDGEMENT

1. The State of Gujarat has preferred Criminal Appeal No.760/1992 to challenge the quantum of punishment inflicted by the learned JMFC, Valsad on the respondents for offence punishable under Sections 7(1) and 16(1)(B) of the Prevention of Food Adulteration Act, 1954 in Criminal Case No.1508/1989 in the judgement and order delivered on May 14, 1992.

1.1 Out of this very judgement, the Convicts have preferred Criminal Appeal No.880/1999, which has been brought before this Court from Sessions Court at Navsari before whom the Appeal was originally preferred.

2. The facts of the case in brief are that the Food Inspector of Valsad, Mr.Rasiklal V. Dodiya, visited the shop of the respondents on November 29, 1988 at about 13.30 hours. He was accompanied by one Mohanbhai Hobhatchand to act as a Panch for taking samples of ground nut oil. The Food Inspector purchased 400 gms of ground nut oil from the shop of the respondents after following requite procedure. Thereafter, the samples were divided into three parts in three bottles and appropriate wrapping and sealing was done. The sample of the ground nut oil was sent to the Public Analyst at Baroda on November 30, 1988 and the same were received by the Public Analyst on December 2, 1988. After examining the said sample, report was made on December 19, 1988 to the effect that the ground nut oil did not conform to the standards prescribed under the Prevention of Food Adulteration Act/Rules. On receiving the report from the Public Analyst, the Food Inspector sent the papers to the Local Health Authority and obtained consent for prosecution as required under Section 20 of the Act. The Local Health Authority, Valsad, by communication dated March 27, 1989, accorded requisite sanction to prosecute the respondents. On the strength of that sanction, a complaint was lodged before the learned JMFC, Valsad on April 12, 1989. The respondents were informed about their right to get the samples further examined by the Central Food Laboratory, Ghaziabad. However, the respondents deemed it proper not to avail of this opportunity. Before the Magistrate, charge was framed on January 9, 1999 at Ex. 40 and the accused pleaded not guilty to the charge and claimed to be tried. After

considering the evidence led by the prosecution, the learned JMFC came to the conclusion that the prosecution was successful in proving the charge against the accused persons. He, therefore, convicted all the accused persons and directed accused No.1 and 3 to undergo rigorous imprisonment for six months with a fine of Rs.1,000/- each and in the event of default of payment of fine, further rigorous imprisonment for one month. The learned JMFC imposed a fine of Rs.1,000/- on accused No.2, the firm of accused No.1 and 3.

2.1 Aggrieved by the said judgement and order, the present respondents filed an Appeal before the Sessions Court, Valsad at Navsari, bearing No.16/1992. Parallel to this, the State Government, not satisfied by the quantum of punishment inflicted upon the accused, filed an Appeal No.760/1992 for enhancement of sentence. By virtue of the order passed by this Court, the Criminal Appeal pending before the Sessions Court has been transferred to this Court. Since both the Appeals arise out of the same judgement and order, they are heard together and are decided by this common judgement.

3. The learned Advocate, Mr.J.B.Pardiwala, appearing for the Appellants in Criminal Appeal No.880/1999 contented that admittedly when the samples were taken, Accused No.3 was not present. He submitted that Accused No.1 and 3 are prosecuted as partners of Accused No.2 firm. He also submitted that the complaint is absolutely silent as regards Accused No.3, who has been erroneously convicted as an accused, simply because he happens to be one of the partners of Accused No.2 firm. There is no evidence on record to show that Accused No.3 was, in any manner, responsible for day-to-day affairs and management of the firm. He submitted that even the charge at Ex.40 is also silent in this regard. Mr.Pardiwala submitted that, therefore, Accused No.3 could not have been convicted in absence of any evidence good enough to fasten the punishment under 17 (a) (ii) of the Act and in absence of evidence that the Accused No.3 was in charge of the conduct of the business of the firm. He submitted that the Accused No.3 was not charged for the offence punishable under Section 17 of the Act. He has been convicted in absence of any such charge against him. He submitted that the prosecution has failed to show that the Accused No.3 was regularly attending the firm and that he was in charge of the day-to-day affairs of the firm. He has placed reliance on the decisions in the cases of State of Gujarat Vs. Grukrupa Kariyana Stores, reported in 1999(1) GLR, 452; Bhanubhai V. Khunti Vs. P.S. Sharma & Anr., reported in 1993(1) GLR, 265; State

of Gujarat Vs. Ratilal Maganlal Shah & Ors., reported in 1995(2) GLR, 1542; and Haji K.K.Moidu and Others Vs. Food Inspector, Kozhikode Municipality, reported in 1962(1) Criminal Law Journal, 647.

4. The second fold of the argument of the learned Advocate, Mr.Pardiwala is that the Accused No.1 and 2 also could not have been convicted. According to him, apart from a defect in the charge, the Accused persons have not been afforded any opportunity of explaining the circumstances against them while recording statement under Section 313 of the Act. He further submitted that if the report of the Public Analyst is perused, the ground nut oil conforms to all the prescribed standards prescribed for ground nut oil, but in addition, presence of castor oil is found. Nowhere it has been stated that the oil did not conform to the standard because of the presence of castor oil and, therefore, Accused were not given proper opportunity of explaining the presence of castor oil in the ground nut oil. The trial, therefore, was vitiated and benefit ought to have been given to the Accused. He also contended that if the charge is seen, it refers to one V.C. Gamit as the Food Inspector, whereas, in fact, it was Rasiklal V. Dodiya, who had conducted the procedure. He further submitted that there is non-application of mind. Probably, the samples in question before this Court are not the samples taken by V.C.Gamit or vice versa and, therefore, conviction could not have been recorded.

5. The alternative suggestion made by the learned Advocate, Mr.Pardiwala, is that if the Court is not convinced about the contention raised on behalf of the Appellants/Accused, the Court may recommend to the State Government for giving benefit of remission to the accused. He submitted that the Accused No.1 is aged about 70 years. He also stated that the Accused has stopped the business and that a period of about 13 years has elapsed ever since the incident occurred. He submitted that there is no scope for recurrence of such incident at the hands of the accused persons and, therefore, they may be given benefit of remission. He has drawn attention of this Court to the decision of this Court in the case of the State of Gujarat Vs. Gangaram Khanmal Sindhi and another, reported in 1999 Criminal Law Journal, 4901 and the decision of the Apex Court in the case of Aladankandu Puthiyapurayil Abdulla Vs. The Food Inspector, Cannanore and another, reported in 1979 (II) SCC, 155. He also relied upon the decision in the case of Jetha Nand Vs. State of Haryana, reported in 2000(2) FAC, 283.

6. The learned APP, Mr.K.T. Dave, has vehemently opposed the appeal by the convicts. He submitted that the accused persons are involved in an offence of a nature which is a menace to the society. The Trial Court has rightly convicted the accused persons, but the Trial Court, at the same time, has shown undue leniency in awarding punishment. He, therefore, urged that the appeal by the accused may be dismissed and appeal of the State for enhancement of punishment may be allowed.

7. This Court has, before it, the record and proceedings of the Trial Court. The learned Advocates of the parties have taken this Court through the record and proceedings threadbare.

8. The learned Advocate, Mr.Pardiwala, took this Court through the evidence and on considering his evidence and the reasonings adopted by the Trial Court, there appears no reason whatsoever for not accepting his contention in respect of accused No.3. There is absolutely no evidence to indicate that accused No.3 was present when the sample was purchased. There is no evidence whatsoever to indicate that accused No.3 was, in any manner, directly involved with day-to-day affairs of the firm and, therefore, in light of the decision relied upon by Mr.Pardiwala, conviction of accused No.3 could not have been recorded. To that extent, Criminal Appeal No.880/1999 deserves to be allowed in light of the decisions relied upon by learned Advocate Mr.Pardiwala, which would be applicable to facts of this case.

9. So far as the contention raised by the learned Advocate, Mr.Pardiwala, in respect of accused No.1 and 2, other appellants in the said Appeal No.880/1999, is concerned, it is not possible to accept the contention that these accused were not given any opportunity to explain presence of castor oil while recording statement under Section 313 of Cr.P.C., since specific question in this regard has not been put. It is also not possible to accept the contention that in the charge, specific defect found in the sample not conforming to the prescribed standards has not been stated and, therefore, the accused persons did not have the opportunity of defending themselves. None of these contentions is acceptable for the reason that admittedly, the accused persons were given copies of all the papers relied upon by the prosecution. The legitimate inference can also be drawn that they were conscious about the report of the public analyst. No prejudice can be said to be caused against the accused No.1 and 2, as they were aware about the

allegations against them.

9.1 So far as the contention regarding the mistake in mentioning their names in the charge and the name of the Food Inspector is concerned, factually the contention is true, but if the record and proceedings are seen, particularly the deposition of the Food Inspector, then it is clear that nowhere the defendants have raised any doubt about Rasiklal V. Dodiya having conducted the raid and having taken the sample and, therefore, this contention cannot be accepted.

9.2 Mr.Pardiwala was not able to assail the judgement and order on any other ground. However, in peculiar facts of this case, his alternative request deserves a sympathetic consideration. He has made a statement at the Bar that the accused No.1 is aged about 70 years. He also stated that since the taking of sample, the accused has stopped the grocery business. The accused No.1 and 2 have not been involved in any other offence till date. It is also a matter of record that the accused No.1 is not the manufacturer, but only the trader. The sample was taken on November 29, 1988 and almost a period of 12 years and 9 months has elapsed. Keeping all these aspects in mind and considering the view taken by this Court in the case of the State of Gujarat Vs. Gangaram Khanmal Sindhi and another, reported in 1999 Criminal Law Journal, 4901, and on the basis of various observations made in the case of Badriprasad Vs. State of M.P., reported in 1995 Supp.(4) SCC, 682 and in the case of N. Sukumaran Nair Vs. Food Inspector, Mavelikara, reported in 1997(9) SCC, 101, needs to be considered in this case having regard to the peculiar facts of this case. I make it clear that this case may not be treated as a precedent. In light of the peculiar facts and circumstances of the present case, while confirming the conviction in respect of accused No.1 and 2, some indulgence is required to be given.

10. Accused No.1 and 2 shall pay the fine, if they have not paid the fine already. The substantive sentence of imprisonment of Accused No.1 will stand suspended for a period of five months, during which it would be open for Accused No.1 to make an application/representation to the State Government for remission of sentence of imprisonment. Such application/representation will be made by Accused No.1 within a period of 30 days from the date of receipt of certified copy of this judgement. If such application is made, the State Government shall decide the same and communicate the decision to Accused No.1 within a period of three months, taking into

consideration the various observations made by the Apex Court as well as this Court in the above referred judgements. In the event the Accused No.1 fails to make application/representation within 30 days as directed, the order of the Trial Court impugned herein will come in force.

11. So far as the Accused No.3 is concerned, his Appeal stands allowed and his conviction recorded in the impugned judgement and order is set aside. His bail bond shall stand cancelled. Fine, if paid, shall be refunded.

12. So far as the Appeal preferred by the State Government for enhancement of sentence is concerned, it may be noted that the Trial Court has used its discretion after considering relevant facts. In view of the above discussions and the conclusion arrived at for acquitting accused No.3 and the observations made in respect of Accused No.1 and 2, there appears no reason for this Court to entertain the Criminal Appeal No.760/1992 for enhancing the sentence and the same, therefore, stands dismissed.

3-8-2001 (A. L. Dave, J.)

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